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Cultural Rights and Civic Virtue

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Richard Thompson Ford
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Cultural Rights and Civic Virtue

Summary

This paper will address the potential tension between two broadly stated policy objectives: one, the preservation of distinctive cultural traditions, often through the mechanism of formal legal rights, and two, the fostering of civic virtue, a sense of local community and the advancement of common civic enterprises.

Many political liberals have argued that liberal societies have an obligation to accommodate the cultural traditions of various sub groups through legal rights and a redistribution of social resources. The “right to cultural difference” is now widely (if not universally) understood to be a basic human right, on par with rights to religious liberty and racial equality.

Other theorists writing in the liberal, civic republican, and urban sociology traditions have expounded on the necessity of civic virtue, community and common enterprises initiated and executed at the local or municipal level of government or private association. These theorists have argued that common projects, shared norms and social trust are indispensable elements of effective democratic government and are necessary to the altruism and public spiritedness that in turn secure social justice.

These two policy goals therefore may at times be in conflict. This conflict is especially severe in larger culturally diverse cities, where social trust and civic virtue are most needed and often in shortest supply. Policies designed to counter cosmopolitan alienation and anomie by fostering civic virtue, social trust and common social norms will inevitably conflict with the cultural traditions and sub group identification of some minority groups. Accommodation of any and all sub group cultural practices will make it difficult if not impossible to foster a common civic culture and social trust.

Programmatically speaking, the paper will argue that such conflicts are often best confronted on the field of political debate and policy analysis, not in the language of civil rights. Rights discourse, with its inherent absolutism, is ill suited to the type of subtle trade offs that these conflicts often entail. While local government and public institutions must be sensitive to the needs of all cultural groups that they affect, the need for civic enterprise and social trust should not be subject to absolute and non negotiable demands for the accommodation of cultural traditions. The accommodation of some cultural traditions will impose severe costs in terms of strife, conflict and the inability effectively to pursue other important social goals—in at least some cases, the cultural traditions, and not the other social goals, should yield.

Keywords: Law, Rights, Multiculturalism

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The Problematic: Rights to Cultural Difference and Civic Virtue

Avishai Margalit and Moshe Halbertal begin their essay: *Liberalism and the Right to Culture* with this sentence: “Human Beings have a right to culture—not just any culture, but their own.”¹ The rest of the essay is concerned, not with defending this proposition, but with exploring how it might be put into practice. This is only one example of a very widely held conviction. For many, one of the most crucial imperatives of a multicultural society is what one might call a “right to culture.” Many argue that the statement in United Nations Universal Declaration of Human Rights, “everyone has the right to participate in the cultural life of the community,” entails a right to cultural *difference*: the right of ethnic and cultural sub groups to retain and perpetuate the practices, norms and mores of their culture.

A right to culture may be a rhetorical figure meant to signal a significant ideological commitment. As an ideological commitment, the right to culture may take the form of a general commitment to learn about and respect the cultural traditions of various culturally distinct groups in a society. It would counsel tolerance of cultural difference and an embrace of a multicultural society; it would stand in opposition to the policies of national assimilation that have so often characterized the nation states of the West. This strikes me as a sensible (though not unassailable) ideological commitment; it is not the focus on my discussion herein.

Often, however, the term “right” is not meant loosely or figuratively; indeed a number of governments or quasi governmental organizations have adopted formal “rights to culture” that anticipate some institutional enforcement mechanism: litigation, administrative dispute resolution, or formal sanctions.

This suggests a vague but pervasive ideological commitment, backed by a embryonic jurisprudence. Here, “culture” is understood to be an important value that decent societies must protect against infringement or dilution, and it is urged that the formal power of government should be deployed in the service of such protection.

Formally, we can imagine two broad categories of activity or regulation that might be invalidated by a right to culture: “public” regulation promulgated by the state—law and

¹ *Liberalism and the Right to Culture*, Social Research Vol 61, 491 (1994).

legislation—and “private” regulations or policies of certain actors in the institutions of the market economy (typically such laws might apply to employers, private universities and schools, landlords and proprietors of public accommodations such as restaurants, theaters and hotels). The former might be described as rights-against-government and the latter as rights-against private institutions. Normatively it may matter a great deal whether the right in question is good against government or against private actors.

There are other complexities. For instance, it will not be at all an easy matter to determine which group practices are considered “culture” for purposes of legal enforcement of a right to culture. In the broadest sense any social practice that is not universally shared among humankind is a product of “culture.” “Culture” include practices that are relatively trivial and unworthy of judicial attention as well as practices that are potentially socially destructive. The American custom of drinking coffee (too often bad coffee) with milk or cream along with dessert rather than espresso coffee after dessert is “culture” and so are the American practices of capital punishment and wide availability of firearms. A formal right to culture cannot employ such a capacious definition of culture, yet practical, working definitions of culture are surprisingly scarce.

These cavils aside, my primary concern herein is that cultural rights and especially *the ideas about group difference and culture on which they often are premised* may be socially destructive in the context of a relatively small and interdependent democratic institution such as a city. This is a different matter than saying that the cultural *practices* of certain “cultural minorities” are per se socially destructive, as I will make clear.

My working hypothesis is that multicultural cities are the vital site of a potentially creative and also potentially destructive tension. They are multicultural on the one hand: polyglot, cosmopolitan, fractured into sub groups by race, ethnicity, custom, economic class and ideology. This suggests an inevitable divergence of opinions, experiences and ways of life, a divergence that will nurture sub group affiliations and loyalties at the expense of understanding, trust and familiarity across the sub groups. They are *cities* on the other hand: the customary location of small scale, if not face-to-face, participatory democracy. The city-state of the middle ages and Renaissance, the early American town studied by Alexis de Tocqueville and the regional governments of the Italian federalist

reform of the 1970s all suggest the importance of smaller, more manageable and more participatory forms of government. And a crucial feature of this smaller scale government is social trust—precisely what the fragmentation of multiculturalism can make difficult to achieve and at worst unavailable.

The Value of Civic Enterprise:

In a (perhaps romanticized) past, great cities inspired collective pride and one of the functions of city government was to encourage citizens to participate in great common projects to the benefit of all. People remarked in admiration and awe at public projects such as bridges, subways, parks, waterways, ports and civic buildings. People beamed with pride at civic culture: museums, public events and the lively arts.

But today any ambitious public project is immediately bogged down in ideological conflict that is often fatal: How can you celebrate Columbus when he was a imperialist who smoothed the way for the oppression of indigenous peoples? How can you be proud of destroying the natural landscape to build a dam, bridge or a freeway? How can you justify spending public money on the bourgeois Opera or Museum of Fine Arts when grass roots folk music/feminist free verse poetry/ ethnic interpretive dance languishes for lack of support?

These questions, and many others like them, are good questions that need to be asked. But too often, we are quick to point out the inevitable incompleteness or bias of any public vision and slow to notice the erosion of the public sphere that comes from no vision or an anti-vision. Without such collective projects and social vision we are without any sense of participation in the civic life of the cities in which we live.

But of course, explicit public vision comes with certain risks. Utopian urban planning, for instance, has often ignored urban diversity and the vibrancy of city street life, imposing instead a uniform, theoretically pure master plan that crushed anything it could not assimilate. Literally scores of authors have commented on the destructive “purity” of modernist city planning. The exemplary prototype was Baron Haussmann’s remaking of Parisian neighborhoods during France’s Second Empire, through which the winding pathways of old Paris (and the buildings that lined them) were made to yield to

the grand boulevards that grace the city of Light today.² More recent examples have remade the American urban landscape: Robert Moses's freeways cut swatches through working class immigrant neighborhoods in New York City³; the urban renewal of the 1960 displaced the thriving African-American Fillmore district in San Francisco, the Latino communities of downtown Los Angeles were literally pushed East to make way for the corporate headquarters of the West Coast's business and finance capitol.⁴ Le Corbusier's modernist plan for Paris was (mercifully) never realized, but a visit to Styvusant Town in New York City would make one think that the *Ville Radieuse*⁵ had found a home in the New World. Some of these civic visions are of such inspired beauty that one cannot help but think it worth the loss (marvel at Place de Concorde and tell me you long for the fetid labyrinth of medieval Paris); others are a crime against the social fabric and an assault on the eye; still others simply incomplete and abandoned, a betrayal of the public trust and an insult to the lives they displaced.

But the attempts to control such civic enterprises by tying the hands of government have not eliminated the type of violent displacement that the critics of utopian planning deplore. Instead, the displacement now occurs under the guise of "efficiency," or the market, rather than under the rubric of progress or urban beautification. The imperialism now occurs through market forces and malign neglect: shopping malls and office complexes replace highways and public works as the engines of displacement; the corporate headquarters as a monument to capital replaces the public sculpture as a monument to the civic hero or heroine. While modern urban planning threatened to destroy communities in the name of the *Ville Radieuse*, today the ethnic neighborhood is slowly destroyed through disinvestment and neglect or displaced by gentrification and spiraling rents: housing abandonment or condominium conversions replace the wrecking ball and the bulldozer of urban renewal.

In the United States, a combination of left wing skepticism of "cultural imperialism" and neo-conservative hostility to government enterprise generally have combined to

² David Harvey, *The Condition of Postmodernity* at 16, 25.

³ See generally Robert Caro, *The Power Broker*

⁴ See generally, Mike Davis, *City of Quartz*

⁵ See Le Corbusier, *La Ville Radieuse* (The Radiant City).

discredit many civic projects. But the retreat from governmental planning and civic vision has not left the city “free” to develop naturally or in response to organic social groups and social interactions. Instead, when civic vision has been abandoned, the state has quietly ceded the field to a destructive clash of covert plans and anti-plans: the acquisitive frenzy of the real estate speculator and the reactionary populism of the selfish or frightened homeowner.

What is needed, then, is not a return to imperialistic planning, but a new if tentative vision. A vision that is coherent, yet open to revision, a vision that is confident, but not arrogant, a vision that is inspiring but does not descend into demagoguery. Such a vision is not imposed from above, but rather is assembled, piece by piece from the fragments of our collective aspirations and ideals.

The Common Good?

Cities need common enterprises and civic vision in order to be livable cities. They also need common civic enterprises and a belief in “the common good” in order to be effective local democracies according to a significant number of social scientists and political theorists. Consider the following statement from the political science Robert Putnam:

In the civic community... citizens pursue what Tocqueville termed “self interest properly understood, that is, self interested defined in the context of broader public needs, self interest that is “enlightened” rather than “myopic, “ self interest that is alive to the interests of others. [By contrast] [t]he absence of civic virtue is exemplified in...“amoral familism”...“Maximize the material, short-term advantage of the nuclear family; assume all others will do like-wise.... Citizens in a civic community, though not selfless saints, regard the public domain as more than a battleground for pursuing personal interest.⁶

Civic virtue’s enlightened self interest requires a commitment to a public sphere and public values shared by all, or at least the vast majority of citizens. Divergence of opinions and views are to be expected, but at the same time there must be some conception of the common good that is widely shared. We may disagree about whether

⁶ Robert Putnam, *Making Democracy Work* at 88.

to prioritize, say, public education over police. We may fight to the bitter end over the issue. But we need to share some at least vague sense of what would make ours a “better city” (better public education and more effective police). Things would become much more problematic if a significant group of citizens thought children should learn on the job as apprentices or if a large faction thought crime prevention better left to private vigilantes. They would be worse yet if some people didn’t care about education at all or sided with the criminals on the belief that private property is immoral. In these latter cases, we would not have routine political disputes and divergent preferences—precisely what a well functioning government and a free market are supposed to mediate—but rather something like a radical disjuncture in terms of the grammar in which the common good is imagined.

Even if each group perceives its goals as compatible with its conception of the common good, outsiders may (mis)perceive those goals as a reflection of what Putnam calls “amoral familism”. Lack of understanding and real, at times radical, divergence in conceptions of the good may erode public trust, encourage citizens to abandon public virtue and instead “maximize the material, short-term advantage of the nuclear family” (or ethnic group) while also promoting the self fulfilling view that “all others will do the same.” Multiculturalism in its stronger manifestations seems to threaten this, and multicultural rights, in their stronger manifestations threaten to entrench it.

Rights Assertion and the Habits of Citizenship.

Consider another of Putnam’s findings:

Citizenship in the civic community entails equal rights and obligations for all. Such a community is bound together by horizontal relations of reciprocity and cooperation, not by vertical relations of authority and dependency. Citizens interact as equals, not as patrons and clients nor as governors and petitioners.⁷

In the classical liberal model, rights are a precondition to effective citizenship: civil rights secure the political equality of citizens that distinguishes democracy from aristocracy and civil liberties allow citizens participate in politics without fear of reprisals from the

⁷ Id.

individuals currently in control of the formal power of the state. In this model, formal rights assertion against government or private actors should be extraordinary. For the most part, rights should function in the background, as guarantors of equality and liberty whose effectiveness is reflected in the fact that they rarely need be evoked formally. When this is true, we needn't pay much attention to the effects of formal rights assertion on the "habits of citizenship".

But multicultural rights are predicated on the political powerlessness of minority cultural groups: because the minority groups are likely to be the victims of illegitimate bias, their legitimate interests are likely to be systematically undervalued by most citizens. Here rights are not a background norm underlying democratic politics, but instead a corrective to a failed or degenerate democracy, as a fix for "process failure" in the language of legal theorist John Hart Ely. In this "process failure" model, rights assertion becomes an alternative to democracy for groups who are likely to be systematic losers in majoritarian politics. As such, rights assertion may become a frequent event in the collective life of these sub groups and these groups may come to define their role as citizens, primarily in terms of the act of rights assertion before courts, rather than as participants in political dialogue with other citizens. At this point we may worry, in Putnam's terms, that the "horizontal relations of reciprocity and cooperation" necessary to good citizenship will become supplanted by "vertical relations of authority and dependency" between subjects dependent on the authority of courts or governmental bureaucracies that enforce rights to culture.

This isn't to suggest that minority rights are never necessary; indeed such rights are essential to realize the promise of multicultural cities, as I will argue below. But minority rights must not become a substitute for engagement with the rough and tumble of democratic politics. Political dialogue empowers members of minority sub groups as equal participants in a political process and thereby fosters horizontal relationships among citizens rather than vertical relationships between individuals and the administrative or judicial institutions that enforce rights to culture. Political dialogue can be an opportunity to foster mutual trust between the ethnic groups which make up a city; by negotiating cultural differences, groups may come to understand that group based differences are not as severe as they imagined and that members of other ethnic groups

are people of good will who can be enlisted in mutually beneficial enterprises for the common good.

This leads us to another of Putnam's observations:

Participation in civic organizations inculcates skills of cooperation as well as a sense of shared responsibility for collective endeavors. Moreover, when individuals belong to "cross-cutting" groups with diverse goals and members, their attitudes will tend to moderate as a result of group interaction and cross pressures... associationism is a necessary precondition for effective self-governance.⁸

Political organizing around specific social *practices*, rather than litigation asserting rights to "culture", might foster coalitional politics and the "cross cutting" group membership that Putnam and others suggest will help produce more moderate attitudes. For instance, recent immigrants might ally themselves with local religious minorities in order to lobby for, say the accommodation of distinctive apparel in public schools (as was at issue in the famous French "affair of the head scarves" in which French school authorities forbade the wearing of headscarves and other religious dress in public school), or with organized labor to press for a generally applicable autonomy over grooming and dress or for flexible work schedules (to accommodate religious or cultural rituals or traditions) in employment contexts. In the process they will often need to compromise in order to maintain a successful alliance. Such a compromise is more likely to be experienced as voluntarily chosen in the way many politically necessary compromises are ("on balance, the compromise was worth it") leading to the mediation of attitudes Putnam describes. By contrast, if a court offers a compromise (say, in the form of a limited cultural rights protection) it may be experienced by the group as a betrayal of their "true" culture or even as a form of compulsory assimilation imposed by a judicial system that is, after all, thoroughly implicated in the norms of the dominant culture.

"Cultural Difference" as a Threat to Civic Dialogue and Sound Policy

What is important to notice is that none of the problems I have identified make reference to the *specific* features of any cultural tradition. The claim here is not that certain cultural traditions are incompatible with democracy, capitalism or political

⁸ Putnam at 90.

liberalism because, for instance, they're too hierarchical, too theocratic, too communal and therefore fail to respect individual autonomy, disregard the equality of women, etc. As a general matter I often find such claims wildly overbroad, alarmist, inattentive to similarities between the "alien" practices and values and readily available analogous Western practices and values and quite often just plain bigoted, (although, in certain contexts, the claims strike me as quite plausible.) For my purposes in this essay I'm agnostic as to these claims.

My claim is that the mere *perception* of cultural difference and the resulting social divisions—objective and imagined—can trouble democratic institutions and enterprises that require social trust and even a thin commitment to shared ideals. At the same time there may be somewhat less than meets the eye to the crisis multiculturalism presents in terms of conflicts involving actual social practices (as opposed to widespread *perceptions* of difference.) To be sure, modern cities consist of people with divergent goals, ideals and conceptions of the good life, but this is type of conflict that liberal democratic institutions are designed to mediate. My hypothesis is that perception of group cultural difference—a sort of "difference panic" on the part of some and fetishization and valorization of group difference on the part of others-- may be much more destructive of civic enterprises than the normative conflict generated the actual practices of various social groups. If so, then the discourse surrounding "multicultural rights" may be a part of the problem, not so much because multicultural rights "go too far" (or because opposition to cultural rights is unacceptably intolerant) but because the arguments *for and against* cultural rights share a socially destructive and at least overblown (if not downright incorrect) presumption: that "cultural" conflict is novel and unprecedented because, unlike garden variety forms of social conflict, *cultural* conflict involves a clash of radically divergent, incompatible, mutually inscrutable and incommensurable value systems.

Cultural difference rhetoric (pro and con) encourages us to see social conflicts in terms of inscrutable group difference. But often, conflicts filed under the label "cultural difference" are better understood in terms of the type of ideological or normative conflict that democracies and markets routinely mediate. Often the reason a social practice in another culture is disturbing is because it is uncomfortably similar to a controversial

practice internal to “our own” culture. In these cases, practices that could be dealt with under existing laws and procedures are unnecessarily complicated by the introduction of a rhetoric of cultural difference.

For instance, the ongoing public outcry over female circumcision is generally presented as a case of “cultural difference.” The rhetoric evokes traditional cultural and religious values in need of protection from “western cultural imperialism” or, alternatively, savage African or brutal Islamic practices that the “civilized world” should unite to combat. This framing, encouraged by *both* those who would defend the practice (or practices) as “cultural traditions” and those who would forbid them as barbaric, clouds the issue and blind us to reasonable policy solutions.

For instance, when doctors in Seattle area hospitals began encountering requests for female circumcision from Somali immigrants in the mid 1990s, the hospitals formed a committee to study the issue. The committee found that refusal to consider performing the practice would lead many to attempt to perform it outside the hospital setting, either at home or in their native country, both options that would often involve severe procedures under unsanitary conditions. By contrast, the committee discovered that a quite small ritual cut in the tissue surrounding the clitoris would satisfy the Somalis cultural and religious needs while leaving only small scar and resulting in little or no long term loss of sensation, sexual function or lasting physical trauma. An obstetrician/gynecologist opined that such a procedure would be less traumatic than the male circumcisions performed as a matter of course on new-born boys in the United States.⁹ A form of civic dialogue that emerged in a local context in which the conflict actually arose and that focused on the specific practice at issue, rather on sweeping ideas of cultural difference, enabled the Somalis and the American doctors arrive at a solution that satisfied both Somali traditions and American norms and laws.

Nevertheless, driven by the fear of a “barbaric” (this term was used to describe the Somalis with shocking confidence and regularity) foreign culture, opponents lobbied for and secured the passage a sweeping federal law that arguably prohibits any form of “female circumcision. The federal law potentially undermines the hard won compromise

⁹ Carol Ostrom, Hospital Debates Issue of Circumcising Muslim Girls, *Seattle Times-Picayune*, September 29, 1996.

hammered out by at least one community that was directly involved in the conflict. It fails to discriminate between a symbolic procedure that satisfies the religious and cultural traditions of a group of citizens while causing less trauma than other procedures that are routinely performed in the United States and a potentially life threatening procedure that at its worst severely interferes with healthy biological function and condemns the woman a life of pain and disfigurement.

Do we need the new federal law to prohibit the more severe form of female circumcision? The answer is no because every jurisdiction in the United States has generally applicable laws against child abuse and endangerment. If the practice amounts to child abuse the abusers can and should be prosecuted under those laws. Viewed as a child endangerment issue, the practice is similar to the refusal of certain Christian denominations, such as the Jehovah's Witnesses to allow medical interventions for ill children, an issue that has been confronted and mediated by American medical professionals and courts.¹⁰ Like the Jehovah's Witnesses, many of the practitioners of female circumcision believe their religion requires it.¹¹ In both cases the children arguably are not capable of freely choosing or rejecting the religious practices of their parents.

One cannot help but wonder whether what is really so disquieting is not the supposed radical difference but rather the striking *similarity* between this cultural practice and the practices that regularly occur in the West. For instance, children with "irregular" genitals are routinely operated on in the United States, for no reason other than aesthetics (one of the reasons cited by the African practitioners of female circumcision.)¹² Male infants in the United States are routinely circumcised despite the consensus that the practice has no clear medical justification. And consider the types of bodily "mutilation" (anorexia, bulimia, a growing number of cosmetic surgeries) that Western women regularly endure, again, in order to conform to the gender norms of their culture.

¹⁰ See, e.g., *Jehovah's Witnesses v. King County Hospital*, 390 U.S. 598 (1968) (children declared wards of the state when parents refused to allow blood transfusions).

¹¹ , see, CELIA W. DUGGER Tug of Taboos: African Genital Rite vs. U.S. Law, *The New York Times*, December 28, 1996, Section 1; Page 1; Column 3.-

¹² See NATALIE ANGIER New Debate Over Surgery On Genitals, *New York Times*, May 13, 1997, Section C; Page 1; Column 1

This example demonstrates that the rhetoric of “cultural difference” that cultural rights discourse encourages doesn’t necessarily lead to the preservation of minority cultural practices. It can lead us *either* to turn a blind eye to a practice that we should confront and condemn (“it’s ‘their culture’ and therefore not our concern”) or to prematurely condemn a practice we should seek to understand (“it’s ‘barbaric’ and an assault on our values.”) Regardless of whether one favors or opposes the practice in question, little is gained by shrouding a social practice in the rhetoric of “cultural difference,” a rhetoric that too often suggests that we are incapable of evaluating the practice in a context specific way, as we would any other social practice. We should confront disquieting and controversial practices in their specifics as a practices that occur in our society, rather than attempt to establish a distance from them by describing them as alien and foreign.

Cultural differences in and of themselves do not pose a threat to the type of civic dialogue that theorists such as Putnam see as central to making local democracy work. What does pose a threat to civic dialogue is the belief that “culture” provides an excuse to opt out of the dialogue and resort to premature defiance or premature coercion. We can and we must engage in dialogue (and when necessary face conflict) concerning social practices about which people will differ. In this sense, “cultural difference” is simply the latest manifestation of that most ancient political dilemma: how can a just society manage desires of citizens with incompatible visions of the good?¹³

Mediation of Cultural Conflict Through Political Dialogue

Notice how the tensions between cultural difference and civic virtue are attenuated by describing the conflicts in terms of a clash of values, goals and practices instead of in terms of inscrutable group cultures. Conceived of in the former, more universal terms, what once were seen as inscrutable foreign practices may instead be seen to involve commitments and norms which other members of a community can understand, if not embrace. So rather than see clitoretectomy as an effect of a foreign culture that is beyond our comprehension, we can see it as a controversial social practice, mild in some of its manifestations, severe in others, and arguably analogous to some more familiar practices,

¹³ See Isaiah Berlin, Two Concepts of Liberty in Four Essays on Liberty 118-119, 170-72 (1969).

such as cosmetic surgery or male circumcision. Instead of a clash of incommensurable values, we are faced with a *political* disagreement susceptible to resolution through the normal institutions of liberal societies: political dialogue, negotiation and persuasion.

Political dialogue and negotiation can reveal the diversity of opinion *within* sub groups that may seem unanimous at first glance: for instance, there are indigenous feminist movements within many ethnic and religious groups struggling to resist “traditional” practices that undermine equality between the sexes; there are intense and compelling struggles over the appropriate interpretation of religious doctrine and the traditional status of many practices, there are more and less cosmopolitan elements within most ethnic groups and more and less progressive views regarding traditional practices. Cultural rights might bolster a practice that is under attack *within* an ethnic group and thereby unwittingly take sides in an “internal” dispute; by contrast, an effective political dialogue can allow such divergent voices within cultural groups a platform from which to speak, in some cases lessening the apparent tension between the norms of various groups in a society and facilitating a richer and more nuanced understanding of group cultural practices.

Political dialogue can be an opportunity for groups to come to understand each other and may help the group that loses a political conflict better accept the outcome. In some cases a group that fails to convince its fellow citizens of the merits of a cultural practice may come away somewhat more receptive to a generally applicable prohibition if their members were involved a conversation about the rationale for the prohibition. Political dialogue can educate recent immigrants as to the norms and values that are dominant in their new or temporary homes; in many cases newcomers are happy to comply with social norms when they know of and understand them.

Consider the following case. Two arranged marriages involving two girls of 13 and 14 years and two men roughly twice their age took place in the state of Nebraska¹⁴. After local law enforcement was informed of the incident, the father of the two girls, a refugee from Iraq, was charged with criminal child abuse and the grooms, fellow Iraqis, were charged with statutory rape for consummating the “marriages” on their wedding

¹⁴ Don Terry, Cultural Tradition and Law Collide in Middle America, The New York Times, Dec 2, 1996, A10.

night. The girls were taken into the protective custody of the state. The lawyer for the Iraqi men reported that none of them could understand why they were arrested: they were simply unaware that the marriage was illegal and that sexual intercourse between “married” minors and adults was considered criminal sexual assault. According to a friend of the accused men, “They were only doing what we have done for centuries. This is not a case of disrespect for the law. We did not know the law.” Another friend who became a sort of unofficial spokesperson for the accused men added “But now that we know there will be no more incidents. We love this country.”

Perhaps this reaction is a ruse to avoid criminal penalties. But on its face, the reaction suggests that what might appear to be an intractable cultural conflict may instead be a simple question of “ignorance of the law,” easily resolved through education. And although at first blush the practice of the Iraqi refugees may seem a radical departure from Western practices, it bears noting that the legal age of consent for sexual intercourse is as low as 14 in some parts of the United States and the legal age for marriage is also as low as 14 if the marriage takes place with parental consent: in other words, for the older of the two girls both the marriage and the sexual intercourse charged as child abuse and statutory rape in Nebraska would have been *legal* in other parts of the United States. And as a consequence of the American constitutional principle that the laws of any state be given “full faith and credit” in other states, a couple legally married in any state generally remains married in any other state of the union, even if the marriage in question could not be entered into under the laws of the new state.

There are good reasons to think that a marriage involving a 14 year old is problematic. But it is not clear why it is more problematic when it arises from the traditions of rural Iraqis than when it arises from the traditions of rural Americans. The Nebraska controversy raised difficult legal and moral issues, but none of the issues were unprecedented or unique to “multiculturalism.” Multicultural rhetoric led the media and local law enforcement into a sort of “difference panic.” Viewed through lens of cultural difference, the practice could only be seen as the effect of an inscrutable foreign culture. At this point only two options are cognizable: protect the practice under the rubric of cultural autonomy, or prohibit it as inconsistent with the norms of Western civilization. Either outcome is destructive of social trust because either outcome reinforces the idea

that the sub-group is radically distinct from the “mainstream” of society, they are *in* but never *of* the local and national community. Viewed through this lens, the sub group is either a candidate for liberal *noblesse oblige* manifested in cultural rights or for isolation and suspicion as a foreign contagion that threatens the community character.

If, by contrast, the local Nebraska authorities had viewed the practice of underage “marriages” without prejudice, several equitable solutions suggest themselves. First and most obviously, take pains to educate newcomers of the applicable marriage and statutory rape laws. More controversially, exercise case-by-case prosecutorial discretion in dealing with child endangerment/abuse and statutory rape violations that involve good faith mistakes about the governing legal norms. The maxim “ignorance of the law is no excuse” is routinely honored in the breach: to be blunt, I find it hard to imagine that an identical fact pattern involving people of European decent from a state where marriages between 14 year olds are legal with parental consent would have resulted in prosecutions for rape and child abuse. Instead, I suspect the parties would have been informed of the governing law, told that the marriage was invalid under Nebraska law and advised to either wait until the daughters reached the age of majority in Nebraska or to travel to North Carolina, marry under *that* state’s law and then return (Nebraska might then recognize the marriage under the full faith and credit clause and the practice of comity between the American states.)

Finally, and again more controversially, enforce the governing law and prosecute willful violations accordingly. Newcomers have the right to expect that they will be treated equitably and they have the right to attempt to change laws they find inappropriate or burdensome through the political process. They don’t have the right to expect established laws, norms and mores to change to suit them or to demand exceptions to generally applicable rules. In this respect, the adage, “when in Rome, do as the Romans do” is apt: for the most part, people who arrive in a new social environment legitimately can be expected to conform their behavior to established norms. Cultural traditions can and do change in response to new circumstances and social expectations. Such a process of change is not necessarily a violation of rights or an instance of cultural imperialism. In this respect it is worthy of note that according to observers of Iraqi society, marriages involving teen-age girls are by and large limited to rural areas and very rare in Iraqi

cities: if rural Iraqis can adapt their marital practices to the dominant cultural norms of Baghdad, they can also adapt them to the dominant norms of Lincoln, Nebraska and other Western cities.

Status-based Discrimination as an Impediment to Successful Integration

Although it would require a separate essay to even summarize the argument, it is long established in liberal societies that there is a relevant distinction between discrimination on the basis of status or group membership and “discrimination” on the basis of behavior or practices. While discrimination based on status is understood to be illegitimate with rare exceptions, in a sense, discrimination on the basis of behavior is the *sine qua non* of law. My suggestion that formal cultural rights (in the form of demands for accommodation of distinctive practices) should be approached with caution and attention to the potential costs in terms of civic trust does not suggest circumspection toward more traditional civil rights prohibiting discrimination on the basis of ascriptive social statuses such as race and national origin.

Indeed, in some instances, the commitment to group cultural difference may be a reaction to the failure of liberal societies to confront and eliminate bias and discrimination on the basis of race or national origin. Consider a conflict over arranged marriage reported several years ago in the *New York Times*.¹⁵ The *Times* covered the story of the son of a Turkish immigrant to Denmark who consented to an arranged marriage at the behest of his parents. The largely assimilated son married a native Turkish woman and eventually the couple settled in Denmark. The cultural gulf between the relatively westernized husband and his traditional wife made the relationship impossible. Ultimately, the husband divorced his traditional wife in order to marry a more assimilated woman of Turkish decent who, like him, had grown up in Denmark. This caused a great deal of animosity between the husband and his own extended family and between the husband’s family, the first wife’s family and the second wife’s family (all of whom hailed from or lived in the same small village in Turkey.)

¹⁵ Roger Cohen, For “New Danes” Differences Create a Divide” The New York Times, December 18, 2000 A1.

The aftermath of this story sounds a cautionary note: one might expect that, “having suffered at the hands of old Turkish custom, the young, bruised couple [the son and his second wife], both Danish citizens, should be enthusiastic supporters of their adoptive land and its campaign to bring ‘Danish culture’ to all, including the more than 8 percent of inhabitants who are immigrants.” But the young couple complain of discrimination in employment and note with dismay that “there is always the sense of “us” and “them,” the old Dane and the new Dane, the blue-eyed and the dark-skinned” and that “the Danes say one thing, that they want to integrate us, and do another. That’s why we fight.”

These statements suggest that robust prohibitions against discrimination on the basis of *status*es such as race, religion and national origin may be a precondition to effective social integration and necessary to foster social trust between ethnic and cultural groups. They also suggest that compromise and negotiation of the conflicts surrounding cultural practices are possible: if offered a consistent message and a realizable goal, recent immigrants would be happy in many cases to integrate into a multicultural society, even at the expense of some traditional practices.

Assimilation and the Promise of Multicultural Cities

At this point it bears noting that some degree of assimilation is arguably an indispensable component of modern nationalism generally, whether it involves “foreign” cultural practices or not. For instance, long before the French attempted to Gallicize their Algerian colonial subjects French elites Parisian-ized the French peasantry, repressing local dialects and rewarding fluency in Parisian French, incorporating certain local customs into a unified national identity and discouraging others.¹⁶ This is a standard story of nationalism generally, and applies to some degree to most nation states. This does not of course, serve as an apology for French (or any other) colonialism, but it does cast the problem of assimilation in a useful historical frame: to a real extent almost all of the world’s currently existing cultures are the product of assimilation. It is understandable but perhaps wrongheaded to presume that the processes of cultural melding that produced the civilizations we enjoy today should stop with the present

¹⁶ I take this to be a quite conventional account of French national formation. See e.g., Eugen Weber, *Peasants into Frenchmen*

generation. Perhaps the difference between the type of successful, if partial, assimilation that is at the heart of national unification and the so far unsuccessful assimilation of contemporary multiculturalism is precisely that of racism and status hierarchy.

Recall that the foregoing analysis doesn't rely on reference to any specific cultural practice or norm: the claim is not that certain cultural traditions are incompatible with democracy or capitalism and political liberalism because, for instance, they're too hierarchical, too theocratic, too communal, disregard the equality of women, etc. Instead, it's the *perception* of cultural difference as an unprecedented phenomenon involving radically alien practices and inscrutable beliefs that threatens social trust and the conditions favorable to civic virtue. My argument doesn't suggest that cultural rights are dangerous because they protect inherently dangerous practices, but rather that they are dangerous because they are premised on the view that conflicts involving practices identified with ethnic sub-groups are distinct from the run-of-the-mill political and ideological conflicts that complex societies routinely confront. Cultural rights presume that group cultural differences are fixed and therefore the inevitable basis of social division. Based on this presumption, they foreclose many of the numerous mechanisms that well ordered societies possess for dealing with normative and social conflicts and for mediating, complicating and softening group based affiliations, biases and divisions.

It is consistent with this argument that social trust in multicultural cities could emerge *either* through sufficient assimilation of cultural minorities to currently dominant customs and values, *or* through sufficient assimilation of all members of the community to some common set of norms and values that would represent an amalgamation of previously distinct and alien customs and values. This latter ideal—a polyglot civic community—is, to my mind, the great, unfulfilled cosmopolitan promise of multicultural cities. This cultural intermarriage and the new artistic, creative and social forms it might produce is what the multicultural city has to offer the multicultural nation state and ultimately the multicultural world: new ways of imagining community and new ways of living together that bridge—and at times transcend—cultural group difference.

Sound utopian? Well, I do use the term assimilation, and I use it advisedly. I don't imagine we can have the kind of multicultural civic community I've described without some changes; changes that some will find unwelcome. Some sacred cows would have

to be butchered, some ritual daggers pounded into ploughshares. And while the polyglot society would to some extent be mix of all the various cultures in a society, let's not fool ourselves: there's simply no way to guarantee that each group will have equal influence. Larger groups, more established groups and groups with disproportionate economic and social influence will have more power to shape the direction of a common multicultural society than recent immigrants with little wealth or social prestige. From the perspective of cultural rights, this is an injustice; I fear it is an injustice law and social policy cannot easily remedy.

Moreover, much of what animates cultural rights is the desire for group self-perpetuation: it not simply a desire to have equal influence over a polyglot society but a desire to remain distinctive. It's not an accident that all of the examples of cultural conflicts I've offered have involved marriage, procreation, children or sexuality. These issues are of central importance because they involve more than simple conflicts between legally competent, adults; they also involve a struggle over the affiliations and socialization of future generations. They are about the future of societies, the continuity of civilizations and the survival of ethnic groups *as groups*.

For instance, arranged marriage is an especially potent symbol of multicultural conflict because it implicates a practice that is valued not only for its own sake but also as a means of maintaining a common group identity. For some immigrant communities, arranged marriage may take on greater importance in the host country than it ever had "at home" because without it there would be no certain means of ensuring a connection between subsequent generations born in the West and the old country. The stakes of the conflict are "cultural survival." As the philosopher Anthony Appiah argues:

the desire for survival is not simply the desire that the culture that gives meaning to the lives of currently existing individuals should continue for them, but requires the continued existence of the culture through indefinite future generations.... Let me stress first that the indefinite future generations in question should be the descendants of the current population. The desire for the survival of the... identity is not the desire that there should always be people somewhere who speak that ...language and practice those ... practices... A proposal to [pay]... a group of unrelated people to carry on [the] culture on some island in the South Pacific simply would not meet the need.

This matters because it seems to me not at all clear that this aim is one that we can acknowledge while respecting the autonomy of future generations.¹⁷

Arranged marriage is perhaps an emblematic multicultural conflict precisely because it implicates the ability of groups to perpetuate group customs and affiliations intergenerationally *and* the often very strongly held aversion to such intergenerational control in liberal societies. There are very good reasons for liberal societies to prohibit marriages involving children unable to make autonomous decisions and to encourage people to socialize across of ethnically-defined lines. While ethnic sub groups are entitled to promote group solidarity through voluntary association, it is not at all clear that they are entitled to hinder younger generations from considering and pursuing alternative affiliations, lifestyles and relationships outside the group. An inevitable and perhaps desirable result of growing up in a multicultural society will be the gradual erosion of some of the most distinctive elements of ethnic group culture and the supplementation of ethnic group affiliations with new, more cosmopolitan modes of action, beliefs and ways of life.

It's precisely the possibility of this type of slow erosion of group identity that many would like to forestall with cultural rights. It seems to me such desires, while understandable, are not desires liberal societies can accommodate. And perhaps it bears noting that even this characteristic demand of cultural difference is, in one sense, not unique to cultural minorities. Parents everywhere and of all races, creeds and classes, desperately wish for more control over their children than modern, dynamic, cosmopolitan and liberal societies can offer or are prepared to yield to them.

Multiculturalism and cosmopolitanism are increasingly the conditions of our age. We will do better to confront and manage the conflicts that arise with compassion, equity and pragmatism than to attempt to banish them with absolutes, be it rigid prohibitions or indiscriminate accommodations and entitlements.

¹⁷ Charles Taylor (Amy Gutman ed) Multiculturalism: examining the politics of recognition, 157 (Princeton 1994)

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